

BEFORE THE BOARD OF SOCIAL WORK EXAMINERS

STATE OF IDAHO

ORIGINAL

In the Matter of the License of:)
)
MICHAEL RAY CERCHIONE,)
License No. SW-2382,)
)
Respondent.)

Case No. SWO-L3-04-02-077

**STIPULATION AND
CONSENT ORDER**

SWO\Cerchione\P33081ba

WHEREAS, information having been received by the Idaho State Board of Social Work Examiners (hereinafter the "Board") which constitutes sufficient grounds for the initiation of an administrative action against Michael Ray Cerchione (hereinafter "Respondent"); and

WHEREAS, the parties mutually agree to settle the matter pending administrative Board action in an informal, non-litigated, less costly manner; now, therefore,

IT IS HEREBY STIPULATED AND AGREED between the undersigned parties that this matter shall be settled and resolved upon the following terms:

A.

1. The Board may regulate the practice of social work in the State of Idaho in accordance with title 54, chapter 32, Idaho Code.

2. Respondent Michael Ray Cerchione is a licensee of the Idaho State Board of Social Work Examiners and holds License No. SW-2382 to practice social work in the State of Idaho. Respondent's license is subject to the provisions of title 54, chapter 32, Idaho Code.

3. Pursuant to Idaho Code § 16-1619(a), social workers in the State of Idaho who have reason to believe that a child under the age of 18 has been abused, abandoned or neglected, or who observe a child being subjected to conditions or circumstances which would reasonably result in abuse, abandonment or neglect shall report or cause to

be reported within 24 hours such conditions or circumstances to the proper law enforcement agency or the Department of Health and Welfare.

4. Pursuant to IDAPA 24.14.01.400 and 24.14.01.450.02.j, the failure of any licensed social worker to report any violation of the law or the Rules of the State Board of Social Work Examiners constitutes unprofessional conduct.

5. The Board alleges the following:

a. Sometime between July 1, 1999, and August 30, 1999, at approximately 2:00 a.m., L.S., who was then 13 or 14 years old, and Petreija Kirkpatrick, an approximately 34-year-old acquaintance of Respondent, arrived at Respondent's apartment in Idaho Falls, Idaho, after drinking alcohol.

b. While at Respondent's apartment:

i. L.S. and Ms. Kirkpatrick drank beer and smoked marijuana. Respondent was aware of this occurring; and,

ii. L.S. and Ms. Kirkpatrick while wearing sport bras danced with each other while Respondent was in his bedroom.

6. Between September 4, 1997, and August 31, 2001, Respondent was employed as a social worker (first during a paid practicum and then as a licensed social worker) at Children's Supportive Services, Inc. ("CSS") in Idaho Falls, Idaho.

7. Respondent's knowledge of and failure to report, pursuant to Idaho Code § 16-1619(a), the consumption of alcohol and the smoking of marijuana by a minor if proven, constitutes unprofessional conduct under IDAPA 24.14.01.450.01.j and further constitutes grounds for disciplinary action against his license to practice social work in the State of Idaho pursuant to Idaho Code § 54-3211(6).

10. Respondent, in lieu of proceeding with a formal disciplinary action to adjudicate the allegations as set forth above, hereby agrees to the discipline against his license as set forth in Section C below.

B.

I, Michael Ray Cerchione, by affixing my signature hereto, acknowledge that:

1. I have read the allegations pending before the Board, as stated above in Section A and the Complaint filed in this case. While I make no admissions in signing this document, I do acknowledge that, if proven, these allegations constitute cause for disciplinary action upon my license to practice social work in the State of Idaho.

2. I understand that I have the right to a full and complete hearing; the right to confront and cross-examine witnesses; the right to present evidence or to call witnesses, or to so testify myself; the right to reconsideration; the right to appeal; and all rights accorded by the Administrative Procedure Act of the State of Idaho and the laws and rules governing the practice of social work in the State of Idaho. I hereby freely and voluntarily waive these rights in order to enter into this stipulation as a resolution of the pending allegations.

3. I understand that in signing this consent order I am enabling the Board to impose disciplinary action upon my license without further process.

C.

Based upon the foregoing stipulation, it is agreed that the Board may issue a decision and order upon this stipulation whereby:

1. License No. SW-2382 issued to Respondent Michael Ray Cerchione is hereby suspended for a period of one (1) year. During the 1-year mandatory suspension period, Respondent shall not practice social work in the State of Idaho. The 1-year mandatory suspension period shall commence from the date of entry of the Board's Preliminary Order filed on September 24, 2002.

2. As the 1-year suspension period has run, Respondent may apply to the Board for immediate reinstatement of his license and be placed on probation for an additional year (September 24, 2003 to September 23, 2004). Once Respondent has

completed the following conditions of probation and can prove completion of the same he will be granted an unrestricted license:

a. During the probationary period Respondent shall satisfactorily complete a minimum of fifteen (15) hours of continuing education credits, in addition to the annual requirement of twenty (20) continuing education credits, covering the following subject matters:

i. Ethics and boundaries between the social worker and clients;
and

ii. Interpersonal relationships in counseling, transference, the dynamics between client and social worker, and issues of power and influence that the social worker inherently has over clients or similarly related topics.

b. If the CEU has not previously been approved by the Board, Respondent must receive prior approval by the Board for any course as to both the institution and coursework for which he is seeking credit. After completion of the coursework, Respondent will provide certified transcripts or other acceptable documentation of completion to the Board.

c. Respondent shall execute a release of information allowing the Board to obtain access to any information it deems relevant to effectuating the terms of this order.

d. Respondent shall pay to the Board an administrative fine in the amount of One Thousand and No/100 Dollars (\$1,000.00) during the first six months of the probationary period.

e. In addition to the preceding, Respondent must comply with the following terms of probation:

i. Respondent shall comply with all state, federal and local laws, rules and regulations governing the practice of social work in the State of Idaho.

ii. Respondent shall inform the Board in writing of any change of place of practice or place of business within 15 days of such change.

iii. In the event Respondent should leave Idaho for three (3) continuous months, or to reside or practice outside of the state, Respondent must provide written notification to the Board of the dates of departure, address of intended residence or place of business, and indicate whether Respondent intends to return. Periods of time spent outside Idaho will not apply to the reduction of this period or excuse compliance with the terms of this Stipulation.

iv. Respondent shall fully cooperate with the Board and its agents, and submit any documents or other information within a reasonable time after a request is made for such documents or information.

v. Respondent shall make all files, records, correspondence or other documents available immediately upon the demand of any member of the Board's staff or its agents.

5. If, during the one-year probationary period, Respondent appears before the Board because of conduct that, if proven, is cause for disciplinary action against his license, Respondent's license shall then and thereby be revoked.

6. At the conclusion of the one-year probationary period, Respondent may request from the Board termination of the conditions of probation. Any request for termination of probation must be accompanied by written proof of compliance with the terms of this Stipulation. The Board shall terminate Respondent's probation provided all of the terms of this Stipulation have been met.

7. All costs associated with compliance with the terms of this Stipulation are the sole responsibility of Respondent. The Board will bear its investigative costs.

8. The violation of any of the terms of this Stipulation by Respondent will warrant further Board action. The Board therefore retains jurisdiction over this proceeding until all matters are finally resolved as set forth in this Stipulation.

D.

1. It is hereby agreed between the parties that this Stipulation shall be presented to the Board with a recommendation for approval from the Bureau Chief at the next regularly scheduled meeting of the Board on or about December 1, 2003.

2. Respondent understands that the Board is free to accept, modify with Respondent's approval, or reject this Stipulation, and if rejected by the Board, a formal complaint may be filed against Respondent. Respondent hereby agrees to waive any right Respondent may have to challenge the impartiality of the Board to hear the disciplinary complaint if, after review by the Board, this Stipulation is rejected.

3. If the Stipulation is not accepted by the Board, it shall be regarded as null and void. Admissions by Respondent in the Stipulation will not be regarded as evidence against Respondent at the subsequent disciplinary hearing.

4. If the Stipulation is not accepted by the Board, it shall be recommended to the Board by the Bureau Chief that the Order of Emergency Suspension entered on September 24, 2002, be withdrawn and Respondent's license reinstated until a full administrative hearing has been held and a final order entered.

5. The Consent Order shall not become effective until it has been approved by a majority of the Board and endorsed by a representative member of the Board.

6. Any failure on the part of Respondent to timely and completely comply with any term or condition herein shall be deemed a default.

7. Any default of this Stipulation and Consent Order shall be considered a violation of Idaho Code § 54-3211. If Respondent violates or fails to comply with this Stipulation and Consent Order, the Board may impose additional discipline pursuant to the following procedure:

a. The Chief of the Bureau of Occupational Licenses shall schedule a hearing before the Board. Within twenty-one (21) days after the notice of hearing and

charges is served, Respondent shall submit a response to the allegations. If Respondent does not submit a timely response to the Board, the allegations will be deemed admitted.

b. At the hearing before the Board upon default, the Board and Respondent may submit affidavits made on personal knowledge and argument based upon the record in support of their positions. Unless otherwise ordered by the Board, the evidentiary record before the Board shall be limited to such affidavits and this Stipulation and Consent Order. Respondent waives a hearing before the Board on the facts and substantive matters related to the violations described in Section A, and waives discovery, cross-examination of adverse witnesses, and other procedures governing administrative hearings or civil trials.

c. At the hearing, the Board will determine whether to impose additional disciplinary action, which may include conditions or limitations upon Respondent's practice or suspension or revocation of Respondent's license.


7. The Board shall have the right to make full disclosure of this Stipulation and Consent Order and the underlying facts relating hereto to any state, agency or individual requesting information subject to any applicable provisions of the Idaho Public Records Act, Idaho Code §§ 9-337-50.

8. This Stipulation and Consent Order contains the entire agreement between the parties, and Respondent is not relying on any other agreement or representation of any kind, verbal or otherwise.

I have read the above stipulation fully and have had the opportunity to discuss it with legal counsel. I understand that by its terms I will be waiving certain rights accorded me under Idaho law. I understand that the Board may either approve this stipulation as proposed, approve it subject to specified changes, or reject it. I understand that, if approved as proposed, the Board will issue an Order on this stipulation according to the aforementioned terms, and I hereby agree to the above stipulation for settlement. I understand that if the Board approves this stipulation subject to changes, and the changes are acceptable to me, the stipulation will take effect and an order modifying the terms of the stipulation will be issued. If

the changes are unacceptable to me or the Board rejects this stipulation, it will be of no effect.

DATED this 20th day of Nov., 2003.

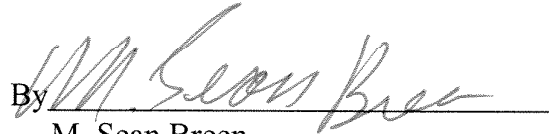


Michael Ray Cerchione
Respondent

I acknowledge these are the agreed upon terms of settlement.

DATED this 18th day of November, 2003.

Manweiler Manweiler Breen and Ball

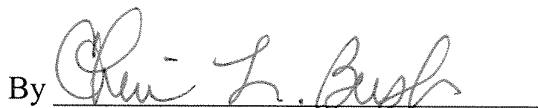


M. Sean Breen
Of Attorneys for Respondent

I acknowledge these are the agreed upon terms of settlement.

DATED this 21st day of December, 2003.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL



Cheri L. Bush
Deputy Attorney General

ORDER

Pursuant to Idaho Code § 54-3204, the foregoing is adopted as the decision of the Board of Social Work Examiners in this matter and shall be effective on the 1st day of December, 2003. IT IS SO ORDERED.

IDAHO STATE BOARD
OF SOCIAL WORK EXAMINERS

By Vita Powers for
Robert Payne, Chair Robert Payne

CERTIFICATE OF SERVICE

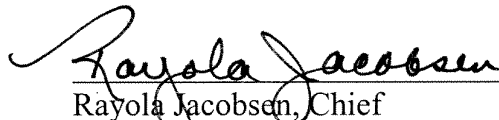
I HEREBY CERTIFY that on this 1st day of December, 2003, I caused to be served a true and correct copy of the foregoing Amended Complaint by the following method to:

Michael Ray Cerchione
C/O M. Sean Breen
P.O. Box 937
Boise, ID 83701-0937

- ☒ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____
- ☐ Statehouse Mail

Cheri L. Bush
Deputy Attorney General
P.O. Box 83720
Boise, ID 83720-0010

- ☒ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____
- ☐ Statehouse Mail



Rayola Jacobsen, Chief
Bureau of Occupational Licenses